

RESTRICTIONS UPON LOCAL AND SPECIAL
LEGISLATION IN THE UNITED STATES.¹

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V.

LEGISLATIVE DISCRETION AS CONTROLLED BY THE
RESTRICTIONS.

IN addition to the prohibition of local or special laws in regard to certain specified matters, many constitutions provide that no such law shall be passed in any other case where a general law can be made applicable.² Under such a clause the question has arisen as to whether the legislature is the sole judge of the possible applicability of a general law, or whether the final decision rests with the courts. In Missouri the constitution of 1875³ set the matter to rest by declaring it a judicial question, but elsewhere the point is raised from time to time.

The earliest decision on this point was made in Indiana in 1854 in *Thomas v. Clay County Commissioners*,⁴ where the Court pertinently observed that if it be held that in passing a special law the legislature had decided that a general law could not be made applicable, without the possibility of an appeal from this decision, the provision requiring general legislation whenever applicable "has no vitality; nor is there any reason why it should have a place

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² Ala., Ark., Cal., Col., Fla. (Const. of 1868, not in new Const.), Ill., Ind., Io., Kan., Miss., Mo., Mont., Neb., Nev., N. Dak., S. Dak., Tex., W. Va., Wy. The Act of Congress of July 30, 1886, as to legislation in the territories also contains this provision.

³ Art. IV, § 53, cl. 32. "Whether a general law could have been made applicable in any case is hereby declared a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject." The decision of the Supreme Court had been the other way. See *infra*.

⁴ 5 Ind., 4. In *Stocking v. State*, 9 id., 326, decided a year later, the court simply say: "If we doubted the constitutionality of the act under the clause in question, we should be bound to throw the benefit of the doubt in favor of the constitutionality of the law."

in the constitution. It would impose no restriction upon the action of the legislature nor confer any power which that body would not possess in the absence of such a provision. If that section permits the legislature to enact a special or local law *ad libitum*, in any case not enumerated, the principle involved would deprive this court of all authority to call in question the correctness of a legislative construction of its own powers under the constitution. We are not prepared to sanction this doctrine. The maxim that 'Parliament is omnipotent' has no place in American jurisprudence. Whether the legislature have, in the case at bar, acted within the scope of their authority is, in our opinion, a proper subject of judicial inquiry."

This doctrine, though subsequently abandoned in Indiana,¹ has been followed in Iowa,² but the latest decision in that State points out that the exercise of legislative discretion, in this as in all other matters, is not to be disturbed except in a clear case.³ So modified, the doctrine is now held also in Nevada⁴ and Colorado. In the latter State the matter was approached from the other side, and it was first announced, in reliance on certain authorities given below, that "whether a general law can be made applicable or whether a special law is authorized for a purpose not falling within the enumeration of prohibited cases, is peculiarly a legislative question; and also that "it is to be presumed, upon the passage of a special statute that in the judgment of the law makers after full and fair investigation, a general law would not affect the purpose designed to be accomplished."⁵ This, however, is not now regarded as excluding the paramount right of the courts to review acts of the legislature, and in a later case⁶ the Court said: "While the

¹ *Gentile v. State*, 29 Ind., 409, and other cases cited *infra*.

² *Ex parte Pritz*, 9 Io., 30 (A. D. 1859); *McGregor v. Baylies*, 19 id., 43.

³ *Richman v. Board of Supervisors*, 77 Io., 513.

⁴ *Clark v. Irwin*, 5 Nev. 111, 124; *Hess v. Pegg*, 7 id., 23; *in re Sticknoth's Est.*, id., 223; *Evans v. Job*, 8 id., 322.

⁵ *Carpenter v. People*, 8 Col., 116, 122, 123; followed in *Darrow v. People*, id., 426.

⁶ *Coulter v. Routt Co.*, 9 Col., 258.

presumption of good faith and sound judgment attach to the acts of legislative assemblies, it is well known that they are liable to commit grave mistakes. To hold that the enactment of a provision involving the palpable abuse of discretion, or that the assumption of discretionary power in a case clearly inapplicable to the rule, cannot be judicially reviewed and annulled, would, in our judgment, subject the court to well-merited criticism for inefficiency in the performance of their judicial functions." Accordingly it was held that a general law not only could be, but had been passed, covering the purpose of the act under consideration, and that the latter was void.

In New Jersey, owing to the peculiar language of the constitution, it is held that even in the enumerated cases special legislation is not absolutely prohibited, but only where a general law could be made applicable.¹ This involves, of course, an exercise of the judgment of the legislature in all cases, but that such judgment is exercised subject to the ultimate right of the court to decide upon the applicability of general laws in all cases was distinctly laid down in *Pell v. Newark*,² a case afterward confirmed in the Court of Appeals. The act under consideration was one regulating the internal affairs of municipalities (one of the "enumerated cases"), and the Supreme Court said: "Assuming that this law is vicious, if the same end could be attained by general legislation, it becomes necessary to determine what tribunal shall settle that question. . . . Does the constitution make the legislature the final arbiter in this matter? Whether a given enactment is constitutional, involves interpretation and construction—the exercise of purely judicial functions. Policy is as clearly a question for the legisla-

¹ *Van Riper v. Parsons*, 40 N. J. Law, 1; *Pell v. Newark*, id., 71; affirmed, id., 550. The language of the constitution is, "the legislature shall not pass private, local or special laws in any of the following enumerated cases. . . . The legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws." Art. IV, § 7, par. 11, Amendments of 1875.

² 40 N. J. L., 71; affirmed, id., 550.

ture. The duty of the several branches of our State government is well defined. No legislative power is conferred upon the judiciary; no judicial power upon the legislature. It would require very clear language to justify the assertion that in these amendments the people intended to vest judicial power in the law maker. Such a rule would subvert the theory upon which our system is framed, and disturb the checks and balances by which it is guarded. Whether the legislature transcended its power, and passed an act in conflict with the constitution, is essentially a question of law, and must necessarily be passed upon by the courts.

"These provisions being incorporated under the fundamental law were designed to establish a fixed and permanent rule, but it is manifest that nothing could be more flexible, if it rests solely in the judgment and discretion of the body upon which it is intended to operate. . . . That the legislature would act in good faith must be presumed; . . . but that the people should have deliberately framed, and imbedded in their organic law an amendment to prohibit special legislation where general laws might be passed, and at the same time should have intended to put legislative action beyond review, where there was a clear infraction of the prohibition, is a proposition to which it seems impossible to assent."

In California the question has not yet been expressly decided, but it has been judicially announced that as the constitution states its provisions to be mandatory and prohibitory, unless by express words they are declared to be otherwise, the question, should it arise, would probably be for the court to decide.¹

In opposition to these authorities, however, the courts of Alabama, Arkansas, Florida, Kansas, North Dakota, Oklahoma, and now Indiana also, maintain that the legislature must decide whether a general law can be made applicable, and such was the rule in Missouri before the Constitution of 1875.

The first decision to this effect was rendered in 1862,

¹ Earle v. Board of Education, 55 Cal., 489.

in the Kansas case of *State v. Hitchcock*,¹ holding that the test was not the possibility of framing a general law to cover the case, but whether such law, if enacted, would work as satisfactorily as a special act, and that this was for the legislature to decide.

The Court said: "We understand this section of the Constitution as leaving a discretion to the legislature, for it would be difficult to imagine a legislative purpose which *could not* be accomplished under a general law. . . . That provision . . . recognizes the necessity of some special legislation, and seeks only to limit, not to prohibit it." This case has since been repeatedly followed in Kansas;² and the fact that a special law may affect to some extent throughout the State the uniform operation of other laws, is held not to weigh against it.³

In Indiana, in 1868 (none of the judges who had sat upon the supreme bench fourteen years before being in office), *Thomas v. Clay County Commissioners*,⁴ was overruled. The Court said that this general restriction upon special legislation is "binding upon the conscience of every member of the [legislative] body, the application of which must be judged of and determined as cases are presented under the oath (which all the members are required to take before entering upon their duties) to support the Constitution of the State, and it cannot be presumed that the members of that body would wilfully disregard the restriction or their obligations to support it, in the enactment of the laws. It is, therefore, an error to say that the restriction is of no validity unless the correctness of the legislative judgment is subject to revision by the courts. . . . It

¹ 1 Kan., 178.

² *Beach v. Leahy*, 11 Kan., 23; *Francis v. A. T. & S. F. Ry. Co.*, 19 id., 303; *Commrs. v. Shoemaker*, 27 id., 77; *Knowles v. Board*, 33 id., 692; *Wichita v. Burleigh*, 36 id., 34; *Washburn v. Commrs.*, 37 id., 217; *The State v. Sanders*, 42 id., 228. In *State v. Llewelling* (Kan., 1893), 33 Pac. Rep., 428, it was held that no general law could have been made applicable to the purpose (establishing the boundaries of a new county), and the question of legislative discretion was not passed upon.

³ *Washburn v. Commrs.*, 37 Kan., 217.

⁴ 5 Ind., 4, *supra*.

[the restriction] only then involves the question of fact whether the act is such that a general law could not be made applicable. It is a question which, as said before, the legislature must necessarily determine; and it may be pertinently asked, what possible benefit could arise from the power of the courts to call in question the benefit of such legislative decisions? We are far from claiming that the legislature is omnipotent, but, on the other hand, we are not sure that the superior wisdom of the court would, in such cases, enable them to judge more accurately than the legislature. The question is one which in its very nature, particularly addresses itself to the legislative judgment, and if a local law be enacted, the reasons upon which the legislature adjudged that a general law could not be made applicable, however satisfactory they may appear to the members of that body, may not appear on the face of the law, and the courts are left in ignorance of them, and if, permitted to review the legislative decisions, must act upon such reasons and facts as may suggest themselves to the mind; and thus the legislature and courts would be liable to be brought into frequent conflict, to no beneficial purpose."¹

The same view was taken in Alabama, where the Supreme Court said that "to hold that the question whether the object of a proposed local or special statute can be provided for by a general law is, at all times, one of judicial inquiry, would lead to most deplorable doubt and uncertainty alike in the enactment and administration of the law. There is scarcely a conceivable subject of local or special grievance, for the redress of which an ingenious advocate or disputant could not find or frame a general

¹ *Gentile v. State*, 29 Ind., 409. This case has since been followed in *State v. Boone*, 50 id., 225; *Longworth v. Com. Council*, 32 id., 322; *Clem v. State*, 33 id., 418; *State v. Tucker*, 46 id., 355; *Kelly v. State*, 92 id., 326; *Johnson v. Wells Co. Comms.*, 107 id., 15; *Evansville v. State*, 118 id., 426; *State v. Kolsem*, 130 id., 434. In this last case it was argued by MCBRIDE, J., in a long dissenting opinion, that what was said in *Gentile v. State*, was only *obiter*, the decision being that the law was a general one, and not special.

enactment.”¹ The decisions² in the five other States above mentioned, as also in Oklahoma, are based upon the authority of the Kansas and Indiana cases.

Of these two mutually irreconcilable views, that which restricts the legislative discretion is certainly the more logical. The question of the applicability of a general law must, of course, be first answered by the legislature, and to that extent its judgment is necessarily exercised; but where a constitution has forbidden the enactment of special or local laws under certain circumstances, it can hardly have been intended that the legislature should be the final judge as to the existence of the circumstances which are to rule its action, or in other words, as to whether or not it is forbidden to do a particular thing. Apart from the question of logic, the weight of authority is quite evenly divided.³

Where a general law has been enacted, the question as to its applicability can no longer be raised, so that the legislature has no further discretion in the matter. Hence, one of the United States Circuit Courts has held that even in Kansas a special law cannot be enacted for a case which is within the operation of an existing general law.⁴ In Georgia, too, where the constitution forbids special laws, “in any case for which provision has been made by an existing general law, this has been held to deprive the legislature of all choice in such cases.”⁵

¹ *Clarke v. Jack*, 60 Ala., 271.

² *Boyd v. Bryant*, 35 Ark., 69; *Little Rock v. Parrish*, 36 id., 166, 172; *State v. Sumter Co. Comms.*, 19 Fla., 518; *State v. Boone Co. Ct.*, 50 Mo., 317; *State v. Madrid Co. Ct.*, 51 id., 82; *Hall v. Bray*, id., 288; *Bd. of Comms. v. Shields*, 62 id., 247; *Edmonds v. Herbrandson* (N. Dak.), 50 N. W. Rep., 970; *Johnson v. Mocabee* (Okla.), 32 Pac. Rep., 336.

³ Hence, while Judge Dillon’s statement (2 Mun. Corp., § 48), that “the better view, and the one supported by the decided weight of authority, is that it is for the *legislature* to determine whether its purpose can or cannot be expediently effected by a general law,” may have been correct when written, it must now be thought to call for some modification.

⁴ *Travelers’ Ins. Co. v. Oswego*, 55 Fed. Rep., 361.

⁵ *Mathis v. Jones*, 84 Ga., 807; *Camp v. Tompkins*, id., 812; *Crabb v. State* (Ga., 1892), 15 S. E. Rep., 455.

As to the matters in regard to which a constitution expressly forbids local or special legislation, it seems incontestable that the legislature has no choice or discretion whatever,¹ unless directly granted by the constitution itself. An instance of such direct grant of permission is found in the provision of the New York constitution, and of that formerly in use in Illinois, in regard to corporations. The language (identical in both) is, "corporations may be formed under general laws, but shall not be created by special acts, except . . . in cases where, in the judgment of the legislature, the object of the corporation cannot be attained under general laws."² In New York it has consistently been held that this means the exclusive judgment of the legislature, which judgment the court has no authority to control.³ The same position was taken in Illinois, but only on the ground of long usage, which could not be changed without very serious consequences, the Court saying: "It is now too late to make the objection, since by the act of the General Assembly under this clause special acts have been so long the order of the day . . . and important and valuable rights claimed under them. The clause has been wholly disregarded, and it would now produce far-spread ruin to declare such acts unconstitutional and void. It is now safer and more just to all parties to declare that it must be understood that in the opinion of the General Assembly, at the time of passing the special act, its object could not be attained under the general law, and this without any recital by way of preamble."⁴

While the express reference in these two constitutions to "the judgment of the legislature," undoubtedly fur-

¹ *Johnson v. Wells Co. Commrs.*, 107 Ind., 15; *State v. Boone Co.*, 59 Mo., 317; *Boone v. Denver*, 7 Col., 305 (citing *State v. Boone Co.*).

² Const. of New York, art. VIII, § 1; Const. of Illinois, 1848, Art. X, § 1.

³ *Mosier v. Hilton*, 15 Barb., 657; *U. S. Trust Co. v. Brady*, 20 id., 119; *People v. Brown*, 30 id., 24 (affirmed 21 N. Y., 517; *N. Y. & H. R. Co. v. Forty-second St. &c.*, R. Co., 50 id., 309; *S. C.*, 42 How. Pr., 481.

⁴ *Johnson v. J. & C. R. Co.*, 23 Ill., 202. To the same effect, *Owners of Lands v. People*, 113 id., 296; *Wilson v. Trustees*, 133 id., 443.

nished ground for the construction thus placed upon it, it must be observed that the New Jersey constitution contains very similar language, and that the reasons (already quoted) given by the New Jersey Supreme Court,¹ when reaching the opposite conclusion, cannot be lightly disregarded. Whatever may be thought of the New York and Illinois cases, they are no authority for according to the legislature the exercise of a judicial function not expressly granted by the constitution.

In cases where there can be no doubt as to the absolute prohibition of special and local legislation a question may yet arise as to the existence of legislative discretion in determining what constitutes a general law under the circumstances. This question has chiefly arisen in connection with classification, and in California, where the legislature is expressly authorized to classify cities and towns according to population,² it is held that "the manner of their classification is a subject for legislative control, and the courts may not interfere with the discretion vested in a co-ordinate branch of the government."³ In Pennsylvania, on the other hand, where a stricter view of such classification is taken, the rule is at present established that in this and every other matter within the restrictive provisions the requirements of the constitution must be closely followed, and that the question of whether they have been so followed or not is for the courts to decide. Thus in *Ayars' Appeal*,⁴ where it was held that there could be but three classes of cities for the purposes of municipal legislation, *Pell v. Newark*⁵ was cited with approval, and its doctrine applied. The Supreme Court said: "It has been suggested that the question of necessity for classification and the extent thereof, as well as of what are local or special laws, is a legislative and not a judicial question. The answer to that question is obvious. The

¹ *Pell v. Newark*, 40 N. J. L., 71.

² Const. Cal., Art. XI, § 6.

³ *Peop. v. Henshaw*, 76 Cal., 436.

⁴ 122 Pa., 266.

⁵ 40 N. J. L., 71.

people, in their wisdom, have seen fit not only to prescribe the form of enacting laws, but also as to certain subjects, the method of legislation, by ordaining that no local or special law relating to those subjects shall be passed. Whether, in any given case, the legislature has transcended its power and passed a law in conflict with that limitation is essentially a question of law and must necessarily be decided by the courts. To warrant the conclusion that the people, in ordaining such limitations, intended to invest their law-makers with judicial power and thus make them final arbiters of the validity of their own acts, would require the clearest and most emphatic language to that effect. No such intention is expressed in the constitution and none can be inferred from any of its provisions. That those limitations were designed to establish a fixed and permanent rule cannot be doubted; but, if the ultimate application of that rule were to rest solely in the judgment of that body on which it was intended to operate, nothing would be more flexible. . . . No such proposition can be entertained by the courts without abandoning one of the most important branches of jurisdiction committed to them by the fundamental law, viz.: the power to ultimately determine whether or not a given law is local or special and has been passed in disregard to the constitutional limitation that has been placed upon the power of the legislature."

This decision has been approved in Ohio, where the Court said: "It is now settled beyond controversy that the constitutional provision above referred to is mandatory, and that a failure on the part of the legislature to observe it will be fatal to the validity of a statute."¹

The Pennsylvania doctrine has been again very recently enforced in *In re Ruan Street*,² where the court held unconstitutional so much of an act as provided a special system of procedure for the assessment of damages and benefits on the opening of streets in cities of the first

¹ *Costello v. Wyoming* (O.), 30 N. E. Rep., 613.

² 132 Pa., 257, 279.

class. WILLIAMS, J., speaking for the majority, said: "It is also suggested that the constitutionality of the Act of 1887 is a legislative and not a judicial question, and that it should be left only to the judgment of the legislature. This suggestion is destitute of foundation. The legislature must exercise its power within the lines laid down by the constitution. What it shall do within these lines is a question that addresses itself to the wisdom and discretion of its members. Whether it shall disregard them and do that which the constitution forbids is a question which, when such legislation is attempted, belongs to the courts. When they decline, if they ever do, to compel obedience to the constitution, all checks upon legislative power will be gone, and the doors to all sorts of local and special laws, which the constitution proposed to close, will be open as wide as in the worst days of omnibus legislation. What the law shall be upon a subject over which the legislature has power is a legislative question. . . . Whether the proceedings in road cases shall be wholly changed or not is for the legislature to determine. It may give us an entirely new system of procedure in such cases, if it so desires. But when it attempts to change the practice in one city or class cities alone, it is attempting local legislation of a mischievous kind, which the constitution forbids, and the question whether such a law shall be enforced is as purely a judicial question as is easy to conceive."

While this decision was not unanimous, it is in harmony with the other Pennsylvania cases¹ in seeking to enforce the utmost uniformity of legislation that may be possible.

Questions involving the limits of a legislature's discretion have also sometimes arisen as to the amendment of

¹ See *Commonwealth v. Patton*, 88 Pa., 258; *Scowden's App.*, 96 id., 422; *Davis v. Clark*, 106 id., 377; *McCarthy v. Commonwealth*, 110 id., 243; *Morrison v. Bachert*, 112 id., 322; *Scranton Sch. Dist. App.*, 113 id., 176; *Scranton v. Silkman*, id., 191; *Strine v. Foltz*, id., 349; *Phila. v. Haddington Ch.*, 115 id., 291; *Weinman v. Pass. Ry. Co.*, 118 id., 192; *Ayars' App.*, 122 id., 266.

special and local laws. It would seem to follow logically from the restrictions upon such legislation, that no special or local law, enacted prior to the adoption of these restrictions, in regard to any matter as to which, since that time, general legislation is required, should be amended except by a general law. A special amendatory law is a special law in regard to the subject regulated by the law which it is sought to amend, just as much as if it did not in terms seek to amend any existing law. Every law does in effect amend existing law, even though it may not do so directly enough, as to any particular subject, to be technically an amendment.

As to certain matters some constitutions expressly forbid special and local legislation by way of amendment, but where the matter is not controlled by some such provision, the courts of the different States are not wholly in accord as to this point. The question has arisen most frequently in regard to the amendment of special charters, particularly those of municipalities. In California the prohibition of incorporation by special act is held to prohibit the conferring of any benefit or imposing of any duty not conferred or imposed by a general law.¹ In Iowa,² Kansas,³ and Ohio⁴ it has been held that the prohibition of incorporation (in Ohio, the conferring of corporate powers) by special act covers the case of amendments as well as original charters, and that old special charters must remain as they are until altered by some special law. Thus in an Ohio case the Court pertinently asked: "What reason or object could there have been in retaining the power in the legislature to amend previous acts of incorporation, and withholding it as to all subsequent acts? What reason, in the nature of

¹ *Peop. v. Cent. Pac. R. R. Co.*, 83 Cal., 393.

² *Ex parte Pritz*, 9 Io., 30; followed in *McGregor v. Baylies*, 19 Io., 43; the practical value of this doctrine is somewhat impaired by *Von Phul v. Hammer*, 29 Io., 222, which upheld a general law under which any city or town acting under a special charter could amend its charter itself, and adopt such new powers as it saw fit.

³ *Atchison v. Bartholow*, 4 Kan., 124.

⁴ *State v. Cincinnati*, 20 O. St., 18.

things, in there for giving cities or towns previously incorporated the privilege to apply to the legislature for an amendment, and recognizing the power of the legislature to act in such cases, and yet depriving those incorporated subsequently of the same privilege? It certainly seems to have been the clear intention, and to be in perfect accordance with the spirit and policy of the instrument, to place all corporations upon the same ground and to give the legislature the same rule in making laws for their action and government."¹

So it has been held in New Jersey that any change in a special municipal charter is a regulation of the internal affairs of the municipality, and therefore cannot be made by a special act,² and in Tennessee the same doctrine has been recognized in regard to private corporations.³

In applying this doctrine it has been held that an act subjecting certain classes of property to taxation for street improvements in a particular city,⁴ or for the establishment of a court in a particular town were amendments of their respective charters.⁵ It has been held also that a corporation with a special charter cannot, while retaining this, acquire any of the rights or powers granted by the general law, because it would then possess powers such as corporations formed under the general law could not obtain.⁶ In Illinois, where amendments by special act are forbidden, the effect of the whole provision is declared to be that while old special charters are not repealed, they can only be amended by the particular municipality bringing itself within the operation of the general law.⁷ An act producing dissimilarity in the mode of levying and collecting taxes in the different cities has been held to be an amend-

¹ *Ex parte Pritz*, 9 Io., 30.

² *Tiger v. Morris Com. Pleas*, 42 N. J. L., 631.

³ *State v. Wilson*, 12 Lea (Tenn.), 246.

⁴ *Atchison v. Bartholow*, 4 Kan., 124, 148.

⁵ *McGregor v. Baylies*, 19 Io., 43.

⁶ *State v. Lawrence Bridge Co.*, 22 Kan., 438. See also *San Francisco v. Spring Valley Water Works Co.*, 48 Cal., 493.

⁷ *Guild v. Chicago*, 80 Ill., 472; *Peop. v. Cooper*, 83 Ill., 585.

ment of their charters, and therefore void.¹ In New York, however, where the provision is the same as in Illinois, and these constitutional restrictions have always been construed so as to hamper the power of the legislature as little as possible, this doctrine is recognized only to a modified degree, and it is held that a special act to amend the charter of a private corporation is allowable if it seeks to regulate the powers, rights, privileges and franchises already possessed by the corporation,² but not if it undertakes to grant new powers or franchises.³ On the same principle a special act amending a local law in regard to petit jurors has been upheld, the Court stating that "it would be too strict a construction of the constitutional provision, to hold that no existing local law upon one of the subjects mentioned in Article 3, § 18 of the constitution, can be amended in any detail without violating the constitution."⁴

In Missouri, where amendments by special act are likewise forbidden, this provision is held to be prospective merely, especially as another clause of the constitution provides that all laws then in force, not inconsistent with the constitution shall remain until they have expired or are amended or repealed, this being held to contemplate the amendment of special acts by others of the same character.⁵

In Colorado, where the legislature is required to provide by general laws for the organization and classification of cities and towns, this was not only held not to prevent special charters previously obtained from being amended by special act, in cases where no general law was considered applicable, but it was even intimated that a special charter could probably be amended in no other way.⁶

In Minnesota, too, a special amendment was upheld

¹ *Peop. v. Cooper*, *supra*.

² *Matter of N. Y. Elev. R. R. Co.*, 70 N. Y., 327.

³ *Astor v. Arcade R. R. Co.*, 113 N. Y., 93.

⁴ *Peop. v. Petrea*, 92 N. Y., 140.

⁵ *State v. R. R. Co.*, 48 Mo., 468; *St. J. & I. R. R. Co. v. Shambaugh*, 106 id., 557.

⁶ *Brown v. Denver*, 7 Col., 305; *Peop. v. Londoner*, 13 Col., 303; *Huer v. City of Central*, 14 Col., 71.

by a divided court on the ground that the prohibition of the conferring of corporate powers by special act had never been understood as including amendments of old charters, the constitution not at time forbidding grants of any special or exclusive immunity, privilege or franchise to any association or corporation.¹

The Indiana constitution of 1851 forbids incorporation by special act (except in the case of a bank with branches), but the schedule provides that "all acts of incorporation for municipal purposes shall continue in force, under this constitution, until such time as the general assembly shall, in its discretion, modify or repeal the same."² This may, of course, be done by a general act,³ but the provision has been construed not only to authorize a modification or repeal by general act, but also to permit any amendment by special act, even where the effect of such amendment is to enlarge the jurisdiction, territorial or otherwise, of the corporate authorities of a municipality.⁴ The amendment of a special charter is also regarded as a case where a general law is not applicable.⁵

In Wisconsin it has been held that the prohibition of special grants of corporate power, except to cities, does not impair the power to alter or repeal charters previously reserved to the legislature by the constitution, and hence that a special charter can still be amended by a special act;⁶ although defective proceedings under special acts cannot be legalized by this means.⁷

¹ *Green v. Knife Falls Boom Co.*, 35 Minn., 155.

² Schedule, § 4.

³ *Evansville v. Bayard*, 39 Ind., 450; *Eichels v. Evansville St. Ry. Co.*, 78 Ind., 261.

⁴ *Longworth v. Evansville*, 32 Ind., 322; *Warren v. Evansville*, 106 Ind., 104; *Evansville v. Summers*, 108 id., 189; *Wiley v. Bluffton*, 111 id., 152.

⁵ See cases cited in last note.

⁶ *Atty. Gen. v. R. R. Co.s*, 35 Wis., 425, 560; *Steven's Pt. Boom Co. v. Reilly*, 44 id., 295.

⁷ *Kimball v. Rosendale*, 42 Wis., 407.